CASE. NO. 85-1898 (1)

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM 1986

MARY MC KENNA

Petitioner

V.

THE WILLOW PRACTICE

Respondent

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

Mary McKenna
708 Devenger Road
Greer, SC 29651
Petitioner
Pro Se

The Willow Practice
527 Mills Avenue
Greenville, SC 29605
Respondent
Pro Se

10/1/86

QUESTIONS PRESENTED

1. Should the U. S. Supreme Court grant relief where numerous plaintiffs have been barred and state courts have failed to grant relief?

2. Should the Supreme Court determine that association of government or quasi-government agencies by their association together have in fact conspired to deprive plaintiffs of their constitutional right to medical treatment according to the best medical judgment of a plaintiff's physician?

QUESTIONS PRESENTED

3. Should a Petitioner in an antitrust case be granted every opportunity for discovery and an action by the Petitioner not be dismissed unless it appears beyond a doubt that Petitioner can prove no set of facts in support of his claim which would entitle him to relief?

4. Whether x-rays are within the contemplation where federal and state trade laws have been violated in terms of the Respondent?

PARTIES INVOLVED

The Respondent, The Willow Practice, is composed of two Greenville, S. C. urologists: (1) John Ernest Lathem from whom the Petitioner sought fistula repair and treatment and who is president of the S. C. Board of Medical Examiners and a member of the executive committee of the Greenville County Medical Society. (2) Dr. Maxie McCoy whom the Petitioner has never seen. Nancy Hudgens, their secretary, has also served as legal counsel.

The Solicitor General, Dept. of Justice, under 28 U.S.C. § 2403 (a), whether the classes of persons described in the Hill-Burton Act are merely illustrative.

The Petitioner, Mary McKenna, a resident of Greer, S. C. has found it categorically impossible to obtain legal help.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of May, 1986, three copies of the Petition for writ of Certiorari in the above styled cause were mailed postage prepaid to The Willow Practice, 527 Mills Ave., Greenville SC 29605, and one copy to the Solicitor General, Dept. of Justice, Washington, D. C. 20530. I also certify that all parties required to be served have been served.

Mary McKenna

Mary McKenna
708 Devenger Road
Greer, SC 29651

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Opinion Below

The trial court ruled against the Defendant on a well pled motion and that ruling was appealed to The Supreme Court of South Carolina which held that the findings of fact were not clearly erroneous, Rule 23 (1). What is appealed is the ruling of the trial court where the verdict had already been decided before the trial. All reference to the counterclaims which are now explosive societal ills of first impression was willfully and wantonly expunged from the record.

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered December 11, 1985. Application for an extension of time in which to file a petition for a writ of certiorari was granted on March 5, 1986 extending the time to and includ-

ing May, 10, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

Statutes Involved

15 U.S.C. § 1455, 1466

21 U.S.C.A. § 352, 360

15 U.S.C.A. § 1-7

42 U.S.C. § 2000

5 U.S.C. § 552

S. C. Code of Laws § 22-3-790 (1976)
S. C. Code of Laws § 1-13-70 (q) (1976)
S. C. Code of Laws § 39-23-40
S. C. Code of Laws § 39-23-20
S. C. Code of Laws § 39-23-29

STATEMENT OF THE CASE

A. The Petitioner has been the victim of a nationwide organized boycott by having her name put on a computer list as known to the National Library of Medicine NLM and the NIH and has been denied access to urological treatment and hospitalization even for other conditions. The boycott and the means effectuating the boycott involve more than one person and are unlawful, oppressive, and immoral which constitutes conspiracy. Brown v. Jacob's Pharmacy Co., 41 SE 553, 554, 115 Ga. 429, 57 L.R.A. 547, 90 Am. St. Rep. 126. All federal and state statutes and laws herein were raised at Magistrate Court.

The Petitioner withheld payment of altered x-rays by refusing to sign and forward the bill to the insurance carrier in order to bring attention to this situation. Agnew v. Parks, 172 Cal App. 2d 756 (1959) demon-

strates the type of impasse the Petitioner is in. Mr. M. Niven, past chairman of The Greenville Hospital Systems, after becoming thoroughly acquainted with the Petitioner's predicament, has declared the situation an impasse.

The Petitioner affirms that the above mentioned x-ray films failed to disclose the status of a previously diagnosed condition and thus were valueless. The purpose of the films was merely to ascertain the degree of damage and the feasibility of treatment.

B. (1) On Friday, April 23, 1982, the Petitioner sought the specific performance of fistula repair from the Respondent taking careful preliminary steps to circumvent a repetition of x-ray alteration commensurate with the fistula code within the specialty of urology as recommended by phone by a leading malpractice lawyer in S.C. who was unable to take the Petitioner's case. On

this date, the Respondent examined the Petitioner and saw the injury, fistula (tear), with the naked eye, it being easily visible then and now, in a regular female examination.

This particular fistula that connects the sphincter muscle of the bladder with the vagina has been positively identified and diagnosed by other doctors, not only on the Petitioner's insurance forms but discussed with members of the community who had undertaken to break the nationwide boycott by urologists to repair this unusual fistula caused by a female deviate in the hospital setting who had no jurisdiction over the Petitioner.

(2) The Respondent, upon positively identifying the fistula, scheduled voiding cystourethrogram x-rays for the next day, Monday the 26th. These showed that the contrast media took two routes of exit simul-

taneously from the bladder. The Respondent darkened out one route of exit.

Since the Express Condition in the contract was fistula repair and management of the infection arising from the fistula and since there was no counter-offer for altered x-rays, it was implied by the fiduciary relationship that the Respondent would act in good faith and this good faith was an Express Warranty for unaltered x-rays. Arnaud's Restaurant v. Cotter, 212 F 2d 883 (5th Cir. 1954). The x-rays were altered knowingly, designedly, understandingly, and with guilty knowledge which qualifies as scienter. Cohen v. Metropolitan Life Ins. Co., 444 SW 2d 498 (1969).

Altering x-rays is unlawful since the x-ray is a device and this device had the Petitioner's name on it after it had been altered (converted) under 15 U.S.C. § 1466

(a)(b) dealing with misbranded consumer commodities and unfair and deceptive acts and practices in commerce.

As acknowledged by the Respondent's representative at Magistrate Court and recorded on tape, the Petitioner had agreed to turn the bill for these valueless films over to her insurance carrier if the Respondent would state either the films were altered or they were not altered. The Respondent refused to select one of these options and the Petitioner declined to forward and sign the insurance form.

(3) A formal complaint was received by the Petitioner on July 23, 1983 charging the Petitioner with non-payment of debt of Three Hundred and Three (303.00) Dollars for these valueless films that had been converted.[1/] The Petitioner advised the

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1/ Alderman v. cooper, 257 S.C. 304, 185

Magistrate Judge verbally and in writing that the issue was a lethal conspiracy and that the altered x-rays were just a symptom of what was really transpiring and that this case belonged in a federal criminal court. The Petitioner has been tagged for "no treatment" on a master computer data bank in Bethesda as known to the NIH and in particular Dr. Nancy Cummings, the advertised head of urology/nephrology for the nation.

The Magistrate Judge was advised that (a) the system has rendered the Petitioner powerless to obtain legal counsel, (b) the Petitioner would present a counterclaim and an affirmative defense and, (c) would want a fair cross section of the citizens in the Petitioner's community to sit on the jury.

S.E. 2d 809 (1971). Royal-Liverpool Inc. Group v. McCarth, 229, S.C. 72, 91 S.E. 2d 881 (1956).

(4) The Magistrate Judge arrogantly rejected all rules of voir dire and remained aloof when, at the beginning, the Petitioner became aware that the Jurors were not randomly selected according to law[1/] and that the verdict of guilty for the Defendant had already been decided. The Magistrate refused to conduct questions and will admit objections were timely.

The right to an impartial jury is guaranteed by the "due process" clause of the 5th and 14th Amendments and the 6th Amendment of the Constitution and S. C.

1/ "Jurors" came from same neghborhood, a mathematical improbability out of 120 precincts of 150,000 voters.

In Taylor v. La. 429 U.S. 522 (1975) the Court, relying on the Sixth Amendment, held that a jury's representative function requires that it be selected from a "fair cross-section of the community."

Code of Laws § 14-7-1020, 1060. This abuse can be assigned as error. 12 SCLQ 370 (1960) State v. Orr, 225 SC 369, 82 SE 2d 523 (1954), cert denied 348 US 848, 75 S. Ct. 74, 99 L.Ed. 669 (1954).

(5) At the "trial" by jury, held before the Honorable H. Howell Clyborne, Magistrate of Chick Springs Court in Taylors, S. C. on November 10, 1983, one juror was allowed to sleep through the presentation of evidence and another juror had a watch alarm that the Judge used as a reminder to terminate evidence presentation five times. A third juror was a medical student of some kind who made a damaging remark during the presentation of evidence. This trial took place approximately two months after surgical removal of abdominal hardened pus in Roanoke Rapids, N.C.

(7) The Magistrate Judge deliberately misled everyone into thinking the Respon-

dent would be present but late for the trial and persisted in ignoring the Heresay Rule throughout the trial. The Respondent never showed up, nor his x-ray technician nor his PA although it was he who selected the trial date. There was no cross-examination and the Respondent never had to support his claim that the Petitioner had wronged him. The Respondent's stand-in, his secretary, refused to say the Respondent had not altered the x-rays.

(8) Although one witness for the Petitioner announced she had been driving since 4:00 a.m. that morning to testify how the Re-

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> "The party who asserts the facts necessary to prevail must establish such facts before he can become entitled to a verdict, and as to these matters, he constantly has the burden of the issue, whatever may be the intervening effect of different kinds of evidence or of possessing varying degrees of probative force."

Henry v. Atkinson, 225 N.S. 526, 35 S.E.

spondent's films differed from the authentic ones taken by a radiologist and the Respondent's secretary who acted as his legal counsel personally declared the counterclaim was altered x-rays, the Magistrate Judge refused to allow the counterclaim[2/] and unlawfully disregarded 21 U.S.C.A. § 352 even after both sets of films were passed around to the jury for comparison. Anyone able to distinguish the difference between a tuning fork and a pencil was qualified to judge the difference between the altered x-rays and the unaltered x-rays. Sard v. Hardy, 367 A. 2d 525.

1/ Spivey v. Newman, 59 S.E. 2d 844.

2/ This right is guaranteed by the 1st and 14th Amendment, Rule 13, Fed. Rules of Civil Procedure.

The Jury was asked by Judge Clyborne to decide if in fact x-ray film material did exist and if the film material existed, to find the Petitioner guilty of non-payment of debt.

(9) The Petitioner served a Notice of Appeal to the Circuit Court on November 21, 1983 with the Greenville County Clerk of Court. The grounds for the Appeal being improper Jury selection and conduct of Jury, absence of voir dire, and misdirection to the Jury regarding the issues involved, no Respondent or witnesses for the Respondent and no cross-examination.

(10) The S.C. Code of Laws § 22-3-790 (1976) for Magistrates' Courts dictates: "Testimony of witnesses shall be taken in writing and signed." The Magistrate Judge high-handedly refused to follow this law against the protest of the Petitioner before, during and after the trial. The Petitioner's

counterclaim and affirmative defense were illegally kept from the record.

Section 23 (2), 33 U.S.C.A § 923 invalidates proceedings where substantial rights of the parties are infringed upon and further states that it is the responsibility of the judicial system to nullify any finding which is "contrary to the indisputable character of the evidence, or where the hearing is inadequate or unfair or arbitrary in any respect."

The Circuit Court Judge in the official Proceedings page 9 lines 1 - 5 stated:

> "This was a case wherein a medical office, apparently, sued you for their fee for services rendered. The issue then before the Jury and

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1/ Both Crowell v. Benson, 52 S. Ct. 290 (1931) and United States v. Raddatz, 100 S. Ct. 2406 (1980) maintain that the verdict should be set aside if all allegations are not open to challenge.

> the Magistrate was that claim, not a claim of inadequacy of services rendered, or defect in any service rendered."

By this statement alone the circuit Judge, himself, declares the "trial" illegal.

In this statement Judge Nicholson admits there was a jury. It is logical to assume the Petitioner was the one to request the jury and there must have been reasons for requesting a jury and those reasons are known as the "counterclaim" and those reasons had to be a claim of "inadequacy of services rendered" and "defect in services rendered."

(11) The Honorable Francis B. Nicholson of Greenville County Court of Common Pleas conducted the non-jury hearing January 20, 1984. Judge Nicholson instructed the Petitioner to confine statements in the Circuit Court to only that

which was new as he was already familiar with Petitioner's counterclaim and the irregularities of the previous trial and would refuse to listen to these facts again. He warned the Petitioner that she would be cut off in ten minutes. He refused to allow Respondent's secretary who alone represented the Respondent to speak against her protest.

Judge Nicholson ordered that the Appeal be denied and dismissed on January 20, 1984 knowing of the kangeroo court and refusing the Petitioner Discovery.

The Petitioner's Notice of Intention to Appeal was duly served and filed on January 25, 1984.

(12) The Supreme Court Reporter, Louise Gray confessed, through a series of letters to the Supreme Court of S. C. and to the Petitioner, to gross deletions and fictionalization of the first half of the

written "Proceeding." The sabotage of the record was to omit any and all "code." Copies of these letters are on file at the State Supreme Court.

The Supreme Court of South Carolina in memorandum Opinion No. 85-MO-297 submitted September 23, 1985 and filed December 11, 1985 affirmed pursuant to Supreme Court Rule 23, a very vague and indefinite rule in an attempt to preclude further judicial review. (See Appendix A)

TIMELINESS

An extension of time for filing a Petition for Certitorari was granted by the U. S. Supreme Court on March 5, 1986 extending the time from March 11 to and including May 10, 1986.

The Petitioner has been denied the right to Discovery. In opposition to Rules 26 to 37 of Federal Rules of Civil Procedure, the Petitioner was not permitted answers to

interrogatories or Freedom of Information Act Forms sent with the intent of providing truth and fact.

A notarized interrogatory was sent registered mail to Elliot Lee Richardson dated May, 1984 requesting specific answers re:

1) the medical blacklist at the NLM
2) malpractice insurance control of HHS
3) nepotism (Cummings)
4) functions of Ellen Guidera and Donald Nathan
5) areas of financial exploitation in merchandizing death re: the blacklist.

A followup registered letter was sent May 9, 1984 to James E. Clyburn, Commissioner for S. C. on Human affairs, requesting aid against the medical blacklist and requesting Mr. Clyburn to use his office under S. C. Code of Laws § 1-13-70 (q) 1976 to ensure an answer to all interrogatories and FOIA forms from the Petitioner. Weeks later in a phone conversation, Mr.

Clyburn [2] said his office dealt only with racial discrimination and no other type of discrimination in sharp contrast to the opinion in Leach v. Drummond Medical Group, Inc., 144 Cal. App. 3d 362, 192 Cal. Rptr, 650 (App. 1983), where it was stated that the Supreme Court of California has repeatedly held that the classes of persons expressly itemized in the Civil Rights Act are illustrative rather than restrictive.

The Clerk of the Supreme Court of S. C. sent a letter to the Dept. of Justice, P. O. Box 629, Raleigh, N.C. 27602 dated April 20, 1984, requesting information regarding File No. 58555/

1/ "Complaints of any practice asserted to be discriminatory..."

39/80. This information would have revealed the results of the investigation carried out by Paul Jordan concerning the crime perpetrated on the Petitioner that the Respondent's films have been altered to hide. No answer was received. This fact has done incalculable harm to the Petitioner. The S. C. State Supreme Court was asked to obtain a statement from the Respondent as to whether he did or he did not alter the x-rays he wants payment for. The appellant's Transcript of Record showed copies of numerous statements from doctors stating categorically the presence of a fistula the Respondent's films have been fixed to hide. The Uniform Commercial Codes both state and federal are of prime concern.

The State Supreme Court was then to judge whether an x-ray is a "device."

The Code of Laws of S. C. § 39-23-40 states a drug or device shall be deemed to be misbranded if its label is false or misleading in any particular. The x-rays the Respondent took of the Petitioner bore the Petitioner's name. However, the moment these x-rays were altered they ceased to be of the Petitioner and this treacherous act was illegal. 500 F. Supp. 536, 21 U.S.C.A. § 360, 676, 21 U.S.C.A. § 352, 29 M.R.S.A. § 1312.

The consequences of this act, since the Petitioner recognized the alterations, was to necessitate the Respondent, who is president of the S. C. Board of Medical Examiners, to bring pressure on other doctors who wanted to help so that the Respondent would not be exposed.[1/]

1/ Steeves v. Community Hospital at Glen Cove, 253, 292 N.Y.S. 2d 440, 239 N.E. 2d

Systematic infection progressed from lack of treatment necessitating flight to another state for emergency surgery for hardened pus accumulating from the apex of the bladder through a patent ureachus to the navel and up to the diaphragm making breathing painful and arduous.

The Supreme Court refused to examine altered x-rays under S. C. Code of Laws § 39-23-20(b)(1)(c) and 39-23-29(f) and 15 U.S.C. § 1466(a)(b) or examine the fact that the Petitioner had no recourse under 15 U.S.C. § 1455 because of the control the malpractice insurers exert in HHS.

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368 (1968) the court recognized physicians are threatened by colleagues and insurers.

In Morey v. Thybo, 199 F. 760, 118 C.C.A. 198, 42 L.R.A. (N.S.) 785, the court said: "Each, in serving with the other, is rightly held answerable for his own conduct, and as well for all the wrongful acts or omissions of the other which he observes and lets go on without objection, or which in the exercise of

STATEMENT ON THE CONSPIRACY

The Petitioner had major abdominal surgery, and hysterectomy after being found in shock from hemorrhage in Greensboro, N. C. at Wesley Long Hospital on January 23, 1978.

Carol Waters, employed only by UNC-G, but on hospital grounds, took devious and illegal charge of the Petitioner at 7:00 a.m. January 24th and deliberately instigated a serious injury in the Petitioner's sphincter muscle of the bladder causing a fistula (channel) into the vagina. Carol Waters connived to prevent discovery and the hospital records for this period are

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reasonable diligence under the circumstances he should have observed."

The Respondent had no right to control subsequent treating physicians. The tort of intentional abandonment and breach of contract has been designated as tortious conduct. Kennedy v. Perrott, 243 NC 355, 360, 90 S.E. 2d 754, 757 (1956). Bender v. Dingwerth, 425 F 2d 378 (5th Cir. 1970)

highly abnormal. The instrumentation she used lasted until almost 3:00 p.m. when a hospital nurse, Sechrest, overheard screams from the Petitioner. Incident papers were filed by Sechrest that day and the administrators were so informed. Fevers, blood, pain, and pus has lasted. The doctor, Rufus Hambright, regularly shoved antibiotics into the Petitioner's purse during office visits but the symptoms became alarmingly worse.

H.M. Michaux, Greensboro U.S. Attorney, and Sam Lankford, Assistant D. A. investigated and filed reports. Paul Jordan of the Justice Department in Raleigh also did a thorough investigation.

The Petitioner was advised in Greensboro to have the sphincter muscle partially cut. Advice was then sought from Dr. John Weinerth at Duke. After many months of no treatment and negative lab reports and re-

fusal on the part of Dr. Weinerth to take x-rays, an intern at Duke saw the Petitioner and graphically described in his report that he had watched the Petitioner manually press pus out of her body and his lab report showed serious bacterial infection. He said he was not allowed to give medical care, only Dr. Weinerth could do this.

A notable event later took place at the Mayo Clinic under the direction of Dr. Richard Symmonds in April, 1980. By watching movies on closed circuit T.V. of contrast media draining from the bladder, the Petitioner noticed that the contrast media took two <u>simultaneous</u> routes of exit: (1) the normal route (2) and an abnormal route through the fistula and down the vagina. Only one tiny film of 15 minutes of movies was developed. One of the exits from the

bladder had been darkened out. Symmonds told the Petitioner he did not want to go against Weinerth and therefore the x-rays had been altered and no help was rendered. By the time the Petitioner returned to Greensboro, H. M. Michaux had already heard about the altered x-rays and wrote a note stating the x-ray "appeared" to be tampered with. Michaux told the Petitioner that her name was on a computer at the NIH controlled by malpractice insurers and that the Petitioner would never be able to obtain either medical or legal help. 15 U.S.C. § 4 was violated.

The Petitioner did pay a lawyer, Victor Lefkowitz of Winston Salem, almost Five (5) Hundred Dollars for the express purpose of obtaining x-ray shots from the Mayo Clinic of contrast media draining from the bladder when 3/4, 1/2, 1/4, and 1/8 full and Lefkowitz agreed to do this

through a urologist he had lined up. The Petitioner demonstrated with diagrams how the fistula closed when the bladder neared the empty stage leaving the Mayo Clinic with the predicament of having to allow the real, vertically-straight urethra to finally and rightfully appear on the last films when the pressure in the bladder diminishes to the point the injured sphincter muscle around the fistula can close it off. (They had chosen to darken the normal exit from the bladder as an alert that a conspiracy was involved.) Victor Lefkowitz at the last minute betrayed the Petitioner and refused to get the x-rays but kept the money. The Petitioner went to the N.C. Bar Assn. in Raleigh and to Doug Cannon at the U.S. Attorney's office in Greensboro and to the news media. Doug Cannon said he would give the N. C. Bar Assn. all the facts

which should be on record at the N.C. Bar Assn. Bobby James said, "nothing could be done because someone has friends in high places."

In July, 1981, the Petitioner moved from Greensboro to Greer, S. C. where blood, pus, and pain continued.

The Petitioner was examined by Dr. James Glenn, then dean of the Emory school of medicine, in his clinic on November 10, 1981. After this thorough examination Dr. Glenn had the Petitioner admitted to Emory Hospital across the street and on an operating table and gassed by 9:00 a.m. the very next morning. The Petitioner first became conscious at 4:00 p.m. The bill was $1080.45 and $300.00 of this bill was designated "surgery." Neither he nor Paul Hofmann, Executive Director, will say what "surgery" was done. Late that afternoon (Nov. 11th)

a "chaplain" informed the Petitioner he had watched hundreds of women in the Petitioner's predicament and if the Petitioner wished to avoid the medical horrors that lay ahead her best option was suicide. Dr. Glenn followed by saying that he had trained Dr. John Weinerth and that the Petitioner should have known this was going to be a set-up and that she therefore had "walked into a trap." He added that he could have fixed the fistula but did not and would not. The Petitioner asked that he forward his records to Dr. Nancy Cummings, the advertised head of urology/nephrology for the nation, at the NIH.

On or about November 30, 1981, the Petitioner made a call to Dr. Nancy Cummings to protest being tracked everywhere by the computer Dr. Martin Marc Cummings directed at the NLM and to ask for permission to obtain help from the

NIH since the computer made it impossible to obtain help anywhere else. Dr. Nancy Cummings argued with the Petitioner saying that Dr. Glenn was the only one that could help the Petitioner and that Dr. Glenn had personally put information on the computer stating the Petitioner was his patient and no other doctor was permitted to help the Petitioner. Dr. Nancy Cummings was then told everything that had happened at Emory and the Petitioner begged for help but these pleas for help were met with only derisive laughter.

The Petitioner saw the Respondent on April 23 & 26 1982 and the x-rays were altered to hide the fistula.

Tuesday, July 6, 1982 Dr. Glenn came from Atlanta to Greenville to tell doctors not to help the Petitioner.

Dr. Glenn followed up on this visit by

circulating copies of a letter he received from Dr. Nancy Cummings dated December 30, 1981 which read:

> "Thanks so much for your letter re Mary McKenna. I made the psychiatric diagnosis over the phone and I salved my conscience re her suicidal comments by asking for specific medical information.
>
> Best wishes for a happy New Year."

At the top of the letter Dr. Glenn wrote in his own handwriting the word "File" and circled the Petitioner's name.

Dr. Nancy Cummings has never seen the Petitioner and she does not possess any psychiatric training. The Surgeon General C. Everett Koop received a letter and unaltered x-rays taken by Dr. David King, a radiologist at Greenville Memorial Hospital, showing the fistula. Dr. Koop said he could not force any doctor to do the fistula repair.

In August 1982, the pain was intense.

The Petitioner sought help next in Columbia and saw Dr. Herlong who administered 40 days of Double Septra antibiotic and then took x-rays around November, 1982. He became highly emotional when he saw the atrocity on x-ray and told the Petitioner to find another doctor and refused to send his x-rays to anyone in Greenville. He did agree to send them December, 1982 to the Surgeon General who sent them right back to Herlong according to Dr. Koop's secretary in writing.

Two months later Dr. Glenn was requested to resign from Emory for ethical reasons.

A lump the size and shape of a golf ball could be felt just below the Petitioner's navel early November, 1982.

At Thanksgiving time 1982 pus the diameter and consistency of toothpast emenated from the Petitioner's navel. A visiting neighbor's son, Dr. Joel Link, hearing about this, asked to see the navel and was

so disturbed he had his family drive the Petitioner to see Dr. Donald Gregg at Exigent who made an effort through Dr. Lattimore and Dr. Gage for help. These doctors freely admitted they saw the fistula.

The Respondent, along with another urologist, Dr. Long, brought pressure on these doctors to stop help for the Petitioner and they withdrew.

Dr. Gregg tried to get legal help through Cathy Anderson who had seen the same situation with another fistula victim, a Martha MacAbee.

Upon request Cathy Anderson wrote a note stating there was no legal or medical solution for the Petitioner.

Hardened pus began to push itself up from the bladder to the navel and under the diaphragm and breathing became a great effort and painful. A meeting was set up with Dr.

W. H. Rhea, head of surgical education at Greenville Memorial Hospital. He refused to help saying he saw nothing. Upon request he put this in writing with a degree of obfuscation, dated "8-16-83."

Sally Crumley of County Council tried to help the Petitioner by calling Mr. John Holly of The Greenville Hospital Systems who refused help. Mr. Malcolm Niven, past chairman of the board of trustees of the Greenville Hospital Systems, tried for two years to break the impasse unsuccessfully.

Two weeks later some of the hardened pus was surgically removed at Halifax Hospital, Roanoke Rapids, N.C. No force on earth can get the pathology report on the excised material.

The state obudsman, Chief Insurance Commissioner and state Senators Norma Russell and Arthur Ravenel, and the State Medical Society all say that nothing has

ever been worked out for those in this predicament.

Dr. John Weinerth, in a phone conversation with the Petitioner, date Sept. 25, 1983 said the Petitioner cannot go anywhere for medical help but back to him at Duke and that it is within his power to prevent the Petitioner from obtaining help in her geographical area and elsewhere. He openly admits this is the update on the computer at the NIH. The Petitioner has been warned by doctors that she would not be safe at Duke and he agreed this was true. This is discrimination and, as yet, the United States has no forum for such a situation. The S.C. State Supreme Court has refused to review this discrimination.

REASONS FOR GRANTING WRIT

The Petitioner has been a victim of a bizarre medical crime that is medically unique, a fistula in the sphincter muscle of the bladder. Consequently, it has been the pontification of the malpractice insurers that the Petitioner be tagged for "no treatment." Insurers have instructed doctors who find unsavory peculiar injury to go on-line to Bethesda for instructions before proceeding with an offer of help. Telling a patient about an actionable medical malpractice injury in preparation for treatment invites serious problems from insurers. To hide disease and injury from the patient is a breach of contract, tort, fraud, bait and switch. The choice between serving the insurer or serving the patient is one of no contest and the conflict of interest is obvious.

The existence of a governmental-com-

puterized blacklist at the National Library of Medicine is uncharted ethical territory. This computer sells a service to medical personnel in every state in the nation. It has immense effect on interstate commerce. It is estimated by top corporate executives that at any given point in time there are two million victims on this list.

> 15 U.S.C. § 1-7 of the Sherman Act prohibits "every contract, combinaton...or conspiracy in restraint of trade or commerce..." encompassing every business including the marketing arm of the pharmaceutical companies and the insurance companies. In Parker v. Southeastern Haulers, Inc. 210 S.C. 18, 41 S. E. 2d 387 (1947), the Court observed:
>
> > "...when the combination is made an instrumentality of injuring others through malice or threats of intimidation, a right of action arises for the resulting injury."

1) It is known in the medical and non-medical community that many on the computer are listed as those of "insignificant occupation" given negative psychological

labels to make the scenario more palatable for the onlooker. This is malice.

2) The computer constitutes an unlawful conspiracy and monopoly to deny persons the right to pursue whatever they need to maintain good health.

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court." 15 U.S.C. § 2.

3) The computer is an invasion of privacy. Mull v. String, 448 So 2d 952 (Ala. 1984).

4) The computer violates the fiduciary privilege. 3 Cooley on Torts (4th ed) p. 361.

5) The use and accuracy of this computerized blacklist information are unregulated.

This service is almost like a credit check. Credit-reporting agencies must conform to statutory standards of accuracy and must provide procedures for challenging their information. This is not true of this computer and individuals about whom misleading information is distributed are left without recourse. The victim of medical misadverture is deemed expendable when the alternative is a potentially large settlement from the insurer.

6) The intent of this list is total medical and legal abandonment. And it is very effective. From a lawyer's viewpoint he sees a highly combative unsavory gigantic organization that has put money in all the right places.1/ The victim soon discovers

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1/ See Time Magazine
March 3rd 1986, P. 26-31.

this is a conspiratorial medical labyrinth from which no trail has ever been blazed. Because the victim has been injured in an unsavory manner he is denied medical attention to remedy the injury and legal help to bring this about. This is discrimination and falls under 42 U.S.C. § 2000b-2. The Petitioner was discriminated against by the Greenville Hospital System when she was turned away at the time pus was coming through the navel. The California Supreme Court has repeatedly held that the classes of persons expressly itemized in the Civil Rights Act are illustrative rather than restrictive. Leach v. Drummond Medical Group, Inc., 144 Cal. App. 3d 371, 192 Cal. Rptr. 650 (App. 1983). Here the Court at 659 went so far as to encourage the plaintiffs to amend their complaint "to allege state action based on receipt of federal funds." See

Simpkins v. Moses Cone Memorial Hospital.
323 F2 959 at 964 (4) (See Appendix C)

The Greenville Hospital System is a public hospital subject to the antidiscrimination requirements of the Fifth and the Fourteenth Amendments as rendered by the instrumentality of government. When there is a violation there is no agency to take the problem to. HHS controls the state ombudsman office and HHS controls the National Library of Medicine that houses the blacklist computer and the malpractice insurance companies control HHS. South Carolina state Senator Arthur Ravenel ran into the same problem when he tried to bring law and order to hospitals in the Columbia area (see S.C. newspapers 1980-85).

Senator Hill, co-author of the Hill-Burton Act, stated that it was intended to assist the states in preparing a statewide

program for new construction so that all the people of the state may have adequate health and hospital facilities. Hearings before Senate Committee on Education and Labor on S. 191, 79th Cong., 1st. Sess.

Should insurance companies have the legal right to keep citizens from obtaining medical help from their local hospital system when it is publically funded or when it is the only facility in the geographical region?

The common law doctrine restricting the power of monopolies has already been successfully applied to a medical group. In Leach v. Drummond, supra, the plaintiffs were made the object of a medical boycott for writing a letter to the California Department of Health Services describing experiences in the emergency room at Ridgecrest Community Hospital after reading in the newspaper that there was already an on-

going investigation. The plaintiffs were subsequently notified that medical services for them in their geographical area would be terminated permanently.

The Drummond Medical Group was judged an enterprise affected with a public interest and as such was under a common law duty to serve all customers without discrimination and arbitrary refusal to serve the plaintiff was in violation of that common law duty.

RESTRAINT OF TRADE

The per se rule is grounded on faith in price competition as a market force but this rule is violated when the malpractice insurers prevent practitioners who have the skill, the experience, the training and the willingness to employ innovative and difficult procedures in individual cases from giving serious, legitimate medical effort. Such restraint discourages entry into the

market and deters new developments by individual entrepreneurs. It may be an option for an agreement not to fix difficult injuries like fistulae today but it may be impossible to fix them tomorrow because it isn't being done today and therefore nobody knows how. And the few who do know how, as Dr. James Glenn claimed he did, will have the leverage to exact a fortune to render it. This is a classic example of the per se rule. Unless the victim of medical crime has the means to be persuasive to a power broker such as Brian Cowan, Donald Nathan, or Ellen Guidera, the victim will be milked unmercifully from "initial" visits and receive nothing desirable in return. In the Petitioner's case, it has been false diagnosis and altered x-rays to harmonize with the false diagnosis and being hauled into court for refusing to help finance her

own destruction.

USE OF INTIMIDATION BY INSURERS

Directly on point is Anker v. Brodnitz, 413 N.Y.S. 2d 582 at 585:

> "To permit private interviews upon the service of a complaint would subject physicians to improper pressures to disclose. Thus, in Hammonds v. Aetna Cas. & Sur. Co., 243 F Supp. 793 (N.D. Ohio, 1965) a doctor was induced to release information that a malpractice action would be brought against him also. Moreover, a doctor who is himself insured by the same carrier that insures a defendant may wrongfully feel compelled to make improper disclosures to the carrier. Compliance with formal discovery procedures would insulate a physician against such improper pressures."

Also, in Steeves v. Community Hospital at Glen Cove, N. Y. 292 N.Y.S. 2d 440, 239 N. E. 2d 368 (1968) the Court recognized physicians fear retaliation by colleagues and insurers. And in Agnew v. Parks, 172 Cal. App. 2d 756 (1959) 343 P. 2d 118 at 127 the seriousness of this problem is graphically spelled out.

NEED FOR FORMAL DISCOVERY PROCEDURES

In Hammonds v. Aetna, supra, both the physician and insurance carrier were held liable in damages also for the privileged communication statute; the state licensing statute; the implied covenant not to disclose whose breach is a contractual violation:

> "(a)lmost every member of the public is aware of the promise of discretion contained in the Hippocratic Oath, and every patient has the right to rely upon this warranty of silence. The promise of secrecy is as much an express warranty as the advertisement of a commercial entrepreneur." (801).

The proliferation of access equipment has now enabled anyone entrance to records that are unscreened for validity and supposedly confidential, without authorization or consent.

The need for the judiciary to involve itself with the issues that a blacklist computer housed by a branch of the govern-

ment is exemplified by Wenninger v. Muesing, 240 N.W. 2d 333 (1976) where the Court states:

> "There is little relevant authority in Minnesota or elsewhere which is helpful in resolving the above issue." And then continued to observe: "Private, nonadversary interviews of the doctor by adverse counsel would offer no such protection to the patient's right of privacy. The presence of the patient's counsel at the doctor's interrogation permits the patient to know what his doctor's testimony is."

LEGISLATIVE NEEDS V. LOBBYISTS

It is a matter of first impression in human history to question the constitutionality of a government computer listing of citizens who represent liability to medical malpractice insurance companies. Despite the fact that such a wrong never has been remedied, it has become an urgent societal need that the obligation not only be recognized, but that the right of redress be recognized as well for herein lies infliction of intentional harms, resulting

in damage (disease and death) without legal excuse or justification.

ETHICS OF MOTIVE FOR CONSPIRACY

The interest in the subject matter of a communication to the computer of private medical records and the corresponding interest the doctors to whom it has been prepared for is inherently dishonest. As it is there is never any screening of validity or opportunity to refute untruths. The information can hardly be considered to be given in good faith when it recommends betraying the trust of the patient.

The sender of information on the computer is guilty of:

boycott, blacklisting
invasions of privacy
libel and slander and defamation
intrusion
violation of patient/physician fiduciary
monopolistic violations of Sherman Act
conspiracy

The receiver of information on the computer is guilty of:

bait and switch
abandonment
misfeasance, malfeasance, nonfeasance
precipitating untimely death
fraud, tort, scienter
breach of contract
conspiracy
See Appendix C

Disclosure by a doctor to third persons of medical information about a patient gives rise to a statutory cause of action and to a cause of action for invasion of privacy and for breach of contract when the patient has not authorized the doctor to disclose the information. 5 U.S.C.§552 a(q) (Privacy Act). Doe v. Roe, 400 N.Y.S. 2d 668, 674, 676 (Sup. Court 1972), Hammonds v. Aetna Casualty & Surety Co., 243 F. Supp. 793 (N.D. Ohio 1965) (Ohio Law).

The tortious conduct of compounding these torts with communicating and inducing a wrongful diagnosis which prolongs disease and suffering and shortens life merely to hide malpractice is unconscionable.

Justice Brandeis provided the classic statement of the rule-of-reason in Chicago Board of Trade v. United States, 246 U.S. 231, 238, 38 S.Ct. 242, 62 L.Ed. 683 (1918):

> "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences."

CONCLUSION

The Petitioner has been forced to seek medical treatment and consultation for extreme physical pain and discomfort at

great financial sacrifice ever since the day of the injury January 24, 1978 and the creation and maintenance of a computer file at the National Library of Medicine that provides a warning to physicians not to adequately treat certain patients has been instrumental in depriving the Petitioner adequate medical treatment.

The Petitioner respectfully requests this Honorable Court to order Discovery through the Freedom of Information Act: (1) from the Department of Justice, a full disclosure of all pertinent facts gathered by the Justic Department in Greensboro and Raleigh, N. C. concerning the crime perpetrated by Ms. Carol Waters, an employee of UNC-G, on the Petitioner at Wesley Long Hospital, January 24, 1978; (2) from Dr. Martin Cummings, Director Emeritus of the National Library of Medicine (NIH), a statement as to the exis-

tence of medical records of patients that pose a hazard to the malpractice insurers at Bethesda; (3) from H.H.S. a full disclosure of their investigation at Emory at the occasion of Dr. James Glenn's dismissal relating to the fistula code and those with this injury to include the Petitioner; (4) from the state of North Carolina, Department of Justice, Raleigh, N. C. 27602, a full disclosure as to why the letter dated April 20, 1984 sent by the Supreme Court of South Carolina was ignored and by whose authority.

It is entrapment to put a Defendant through a judicial system when it is foreknowledge that the stakes are high and the Defendant possesses formidable incriminating evidence that, given a just trial, would jeopardize a major accomplishment of powerful lobbyists and PAC money peculiar to the underwriters of a major

industry that even exerts the power to prevent any legal counsel for that Defendant.

The Petitioner further prayerfully requests this Honorable Court to order the judgment of the Magistrate Court be vacated on the grounds that none of the requirements were met that meet the criteria of a trial as the jury was openly and boastfully committed to a conviction prior to voir dire for which timely objection was made and the jury "selection" was deviously staged before and separate from regular voir dire.

The Petitioner prays a solution would be granted.

Respectfully submitted,

Mary McKenna
708 Devenger Road
Greer, SC 29651
(803) 288-1288
Pro Se

APPENDIX-A 1

A summons was served on the Defendant, "Mrs. McKenna," July 21, 1983 for a complaint from The Willow Practice stating that the Defendant was indebted to them in the sum of $303.00 "on non payment of medical bill." The summons instructed the Defendant to appear before H. H. Clyborne, Magistrate for Chick Springs Township, on the 20th day from the date of service. The Defendant immediately requested a trial by jury for the presentation of a counterclaim and affirmative defense. The Plaintiff chose the trial date, Nov. 10, 1983. The Petitioner is satisfied every detail was worked out in this period whereby the verdict of guilty was settled before trial date. The Petitioner questions the legality of venue, an isolated area, when the Petitioner is from Greer, S.C.

BEST AVA

A 2

DOCKET NUMBER 83-CP-23-4304

Case No 83-CP-23-4304

NOTICE OF INTENT TO APPEAL
APPEAL FROM MAGISTRATES COURT
H. Howell Clyborne, Jr.
MAGISTRATE CHICK SPRINGS
TAYLORS, SC 29687

Willow Practice,

Plaintiff-Respondent,

against,

Mary & Fred McKenna

Defendant-Appellant.

NOTICE OF APPEAL

TO: Judge Howell Clyborne, Jr., Magistrate Chick Springs and Nancy B. Hudgens, Attorney for the Plaintiff-Respondent

The Defendant-Appellant files this Notice of Intent to Appeal the Jury Verdict of the Magistrates Court held on November 10, 1983 at the Chick Springs Magistrate Court. The Defendant-Appellant hereby appeals to the Circuit Court for redress of Judge Clyborne's decision of November 10,1983. The grounds for the Appeal being improper Jury selection and misdirection to the Jury regarding the issue involved.

Upon hearing, Within appeal denied and dismissed

January 20 1984 Nancy B. Hudgens Mag. Judge

November 21, 1983

ORDER

CLERK'S COST PAID

Upon hearing, Within appeal denied and dismissed

January 20 1984 Nancy B. Hudgens Mag. Judge

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A 3

The Supreme Court of South Carolina

Willow Practice, Respondent,

v.

Mary McKenna, Appellant.

No. 83-CP-23-4304

ORDER

For good cause having been shown, the time for serving the proposed case and exceptions in the above case is extended until May 30, 1984.

IT IS SO ORDERED.

BRUCE LITTLEJOHN, CHIEF JUSTICE

BY Brenda J. Hardy
DEPUTY CLERK

Columbia, South Carolina

April 20, 1984

Copies to: Mrs. Mary E. McKenna
Nancy B. Hudgens, Esquire

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A 4

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK

P.O. DRAWER
COLUMBIA, S.C. 29211

The Willow Practice, Respondent,

v.

Mary McKenna, Appellant.

No 84-483

ORDER

For good cause having been shown the time for serving and filing reply brief of appellant in the above entitled case is hereby extended to November 16, 1984.

BRUCE LITTLEJOHN, CHIEF JUSTICE

By _____
Clerk

Columbia, South Carolina

October 31, 1984

Copy to: Ms. Mary McKenna
The Willow Practice

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The Willow Practice, Respondent,

v.

Mary McKenna, Appellant.

Appeal From Greenville County
Francis B. Nicholson, Judge

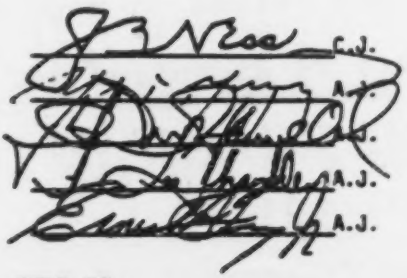
Memorandum Opinion No. 85-MO-297
Submitted September 23, 1985 Filed December 11, 1985

AFFIRMED

Mary McKenna, of Greer, pro se.

The Willow Practice, of Greenville, pro se.

PER CURIAM: Affirmed pursuant to Supreme Court Rule 23.



RULE 23

After the return in any matter pending before this Court shall have been docketed, or at any subsequent stage of the appeal, the Court may file a memorandum opinion dismissing the appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Court determines that a full written opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of a matter submitted to the Court for decision: (1) that a judgment of the trial court is based on findings of fact which are not clearly erroneous; (2) that the evidence of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; (4) that no error of law appears.

APPENDIX B

B-1

All exceptions were maintained from the Transcript of Record through Brief of Appellant and Reply Brief of Appellant, but in some cases combined, and were mentioned in Proceedings, Civil Ct.

Right to Face the Accuser

"The truth, the whole truth and nothing but the truth" is essential in the life and death situation in the present case. This was raised in Mag. Ct. and Civil Ct. and was TR Exception 14. Hearsay Rule, Article VIII, Rule 803 (4) 6th Amend. Exception 14.

The Transcript of Record contains doctors' statements stating the Petitioner has a fistula. TR page 14, 15, 16, 17, 18e, 19, 22 and 29. These statements alone are proof enough that the Respondent is guilty of fraud and tortious conduct.

In Walters v. Bridges, 251 N.C. 289 (1950), 111 S.E. 2d 180 appropriate attention was given to the Plaintiff's responsibility:

> "The burden rests upon the plaintiff to produce a preponderance and a greater weight of evidence."

In the case at bar the Respondent did not produce anything. Why? The fact that the Magistrate Judge went along with the gag of pretending it didn't matter if the Respondent didn't show up at the trial cued the jurors on what kind of a verdict was wanted and expected from them. And since the same neighborhood was used for the jury pool, it would not have been a political move to dissent. For many reasons the trial was unique and broke many precedents:

(1) No Plaintiff

(2) No evidence for the Plaintiff

(3) No witnesses for the Plaintiff

(4) No counterclaim permitted for the Defendant to go to the jury.

(5) No legitimately selected jurors

In Clark, v. Barber, 202 S.E. 2d 349 a similar observation was made:

"The instructions of the Court are based upon an assumption of facts which are not in evidence and must be held for error."

Right to Cross-examination

6th Amendment. TR Exception 20, 17, 14.

In civil cases under Rule 52 (a) of the Rules of Civil Procedure, relating to instructions to the jury by the judge in civil cases, there is a proviso which reads:

"(P)rovided, the judge shall give equal stress to the contentions of the various parties." (Emphasis added).

Baxley v. Cavenaugh, 243 N.C. 677 (1950), 92 S.E. 2d 70:

"It is prejudicial error to submit to the jury for consideration facts material to the issue of which there is no evidence." Marshburn v. Patterson, 241 N.C. 441, 85 S.E. 2d 683. Darden v. Leemaster, 238 N.C. 573, 78 S.E. 2d 448. State v. McCoy, 236 N.C. 121, 71 S.E. 2d 921. State v. Pillow, 234 N.C. 146, 66 S.E. 2d 657.

Even though stated as a contention, an instruction that presents an erroneous view of the law or an incorrected application of it, if prejudicial, is grounds for a new trial. Harris v. White Const. Co., 240 N.C. 556, 82 S.E. 2d 689.

Harris v. White Const. Co., 240 N.C. 556, 82 S.E. 2d 689 is on point:

"Errors in the charge go directly to the crux of the case, not to a subordi-

nate or incidental feature thereof."

Right to Discovery

This request was made at every stage of the judicial procedure to demonstrate the degree of conspiracy, degree of monopolistic discrimination and numerous constitutional violations involved in this case. TR, Statement, P1, Lines 11 - 15. TR Exception 23 Rules 26 to 37 of Fed. Rules of Civil Procedure.

Justice can only be served by fact and truth. Law books are loaded with cases supporting the maxim that those who sit in judgment must hear. Limiting and suppressing evidence at the trial was indefensible.

"The party who asserts the facts necessary to prevail must establish such facts before he can become entitled to a verdict, and as to these matters, he constantly has the burden of the issue,

whatever may be the intervening effect of different kinds of evidence or of evidence possessing varying degrees of probative force. Henry v. Atkinson, 225, N.C. 526, 35 S.E. 2d 638 (1945).

Cross v. Beckwith, 16, N.C. App. 361 (1972), 192 S.E. 2d 66:

"Conflicting instructions on a material aspect of the same case must be held prejudicial error since it cannot be determined that the jury was not influenced by the portion of the charge which is incorrect. Hardee v. York, 262 N.C. 237, 136 S.E. 2d 582 (1964). Talbert v. Honeycutt, 12 N.C. App. 375, 183 S.E. 2d 274 (1971).

Right to Impartial Jury

This right is guaranteed by the "due process" clause of the 5th and 14th Amendments and the 6th Amendment of the Constitution. TR Exception 1, 2, 8.

This was raised at voir dire. (Exception 22)

Since the Appellant was going to go to considerable effort to design, locate and put together expensive glassware only found in a chemistry lab to produce a thirty (30) inch high display model of TR. page 41 as a visual aid and the Petitioner lives in Greer (see covers) and the "trial" was designated for Chick Springs, Taylors, the Petitioner, knowing nothing about Chick Springs, asked the Magistrate Judge in advance about the prospective jurors. The Magistrate Judge indicated that there was no cause for concern. The Petitioner accepted this answer without suspicion. Judge Clyborne was unable to tell Brenda Paschal of the Greenville Piedmont Newspaper how he selected jurors for the

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Petitioner. See below:

LOCAL

REENVILLE PIEDMONT — Monday, November 26, 1984

Jurors for the magistrates courts are assigned according to the precincts assigned to each township, Clyborne said. The precincts designated for each township in the 1983 supplement to the 1976 Code of Laws do not correspond to precincts used by the Greenville County Election Commission today.

However, Clyborne said lists of jurors' names are sent each year to the townships in which the jurors live. He said jury lists are updated each January, with each individual magistrate responsible for keeping jury boxes and for drawing juries, with no person being drawn more often than once every three months.

Right to Proper Jury Instruction

Exception 7, TR page 35 Quotes from Greenville County Magistrate Manual verbatim xeroxed by Judge Lollis:

"The judge should clearly state at the outset of the trial what the issues of the claim and counterclaim are thereby appraising the jury of its responsibility to ultimately render separate verdicts on the

claim and counterclaim. Instruction to the jury should be included where changes of counterclaim are made."

Although the Respondent declined to show up at the trial and produced no witnesses and produced no evidence, the Magistrate Judge charged the jury with precisely what the Respondent has in his Brief in "XIII" -

"The Appellant admits the X-rays were made, therefore, Appellant admits that the physician did perform the services for which she was billed."

In contrast, the Petitioner did show up at the trial and did produce witnesses and did produce evidence (against strenuous opposition) and did prove X-rays made by the Respondent were altered. And again in contrast, the Magistrate Judge refused to recognize the counterclaim of the Petitioner.

The absurdity of this situation is monumental and only surpassed by the last half of the charge to the jury which says:

> "Appellant admits that the physician did perform the services for which she was billed."

Does this mean the Petitioner had a contract with the Respondent for altered X-rays and deception and a service to a conspiracy of silence? Does this mean that the Petitioner asked for a jury trial for the express purpose of getting witnesses and expensive laboratory equipment for a visual aid and "copious" amounts of documentation and real and substantive evidence just to announce to six (6) strangers on the jury that the Appellant "admits that the doctor" billed her for altered X-rays that she wanted? Does this mean that the doctor only does altered X-rays? Does this mean that the shopper

has a choice between altered and unaltered X-rays?

Right to Counterclaim

This right is guaranteed by the 1st and 14th Amendments, Rule 13, Federal Rules of Civil Procedure. Exception 17, 15, 16, 18.

"COUNTERCLAIM : : ALTERED X-RAYS was written on the blackboard in very large block letters at Magistrate Court. While the Respondent and the Court have systematically suffocated justice, the Petitioner has had to persistently remind and keep in the record the fact that the Respondent still has not given an answer to the question: were X-rays altered?

The Respondent's brief states:

> "The nature of the cause of action (Summons for Debt) was simple and straightforward and did not involve facts that would lend themselves to a high degree of bias for one party

or the other."

Using and abusing the judicial process to force a sale of altered X-rays to serve a conspiracy of silence meant to result in the death of the Appellant might be construed by those more gifted at logic to be more complex than a simple, straightforward debt.

Interspersed in Respondent's Conclusion and Arguments XI and XIII is admission of the counterclaim. From XI, page 7:

> "existence of evidence ... a second set of X-rays which Appellant and her witnesses testified to at the trial ... prove ... the Respondent covered up."

By any dictionary definition the X-ray is a device. The South Carolina Code of Laws Section 39-23-20(b)(1)(C), 1976 states that "articles (other than food) intended to affect any function of the body of man" is covered by this section. The X-raying of the urological system

fulfills this criteria.

Section 39-23-40 of the Code of Laws of South Carolina states a drug or device shall be deemed to be misbranded if its label is false or misleading in any particular. The X-rays the Plaintiff took of the Appellant bore the Appellant's name. However, the moment these X-rays were altered they ceased to be of the Appellant and this treacherous act was illegal.

The South Carolina Code of Laws Section 39-23-29(f) describes labeling as follows:

> "The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be

false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual."

Quoting from the second line of the Respondent's argument for "IX" -

"our Supreme Court has always regarded the Magistrate Court forum as an

informal setting"...

Does this "informal setting" mean:

1) The Magistrate Court has the prerogative to abandon the intent and rules of voir dire.

2) The Magistrate Court has the authority to discontinue the "Hearsay Rule."

3) The Magistrate Court has the license to discard counterclaims in the event they prove hazardous to a Plaintiff-doctor.

4) The Magistrate Court has the right to refuse to acknowledge proper and timely jury instructions for capricious reasons.

5) Doctors, enjoying a privileged immunity to ordinary English common law, have relegated officers of the courts to a status on a par with their kitchen help.

6) The pedestrian has come to accept the lower courts as a necessary evil and a necessary obstacle course to reach the legitimate tribunal and forum.

The Plaintiff's two stand-ins were not capable of any statement. Altering an X-ray is no service to the Appellant. In Penny v. Seaboard Coast Line RR Co., 10 N.C. App. 659, 179 S.E. 2d 864 (1971) the Court observed:

> "In 5 A C.J.S. Appeal and Error Section 1766, pp. 1228-1229, it is said: "Ordinarily the assumption of a material fact where the evidence with regard to it is conflicting, or where it is unsupported by any evidence, will constitute ground for reversal.***

The Petitioner did not receive a "trial" by definition. TR Exceptions 1 through 23. The members of the jury, the peculiar time

of the "voir dire," the jury instructions and the verdict were all deviously pre-arranged. The Plaintiff never showed up for the trial although it was he who selected the trial date. For the uninitiated, trusting and believing in the judicial system, the consequences are grave.

Where national concerns are at stake, Article III provides plenary grants of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment. Palmore v. United States, 411 U.S. 389, 407-408, 93 S.Ct. 1670, 1681, 36 L.Ed 2d 342 (1973).

The framers of Article III wanted judicial power in a body of judges insulated from majoritarian pressures so constitutional principles could be enforced without fear of reprisal. The

Federalist Nos. 78 and 79; Glidden Co. v. Zdanak, 370 U.S. 530, 82 S.Ct. 1459, 8 L.Ed. 2d 671 (1962); O'Donahue v. United States, 289, U.S. 516, 530; 53 S.Ct. 740, 743; 77 L.Ed 1356 (1933).

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prepare and execute without consideration such instruments as may be appropriate to carry out the purposes of this Act.

Approved December 31, 1974.

Public Law 93-579

AN ACT

r 31, 1974
3418]

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

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552a

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974".

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552a

SEC. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

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(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

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(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for irs intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

5 USC 552a.

Ante, p. 1564.

SEC. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

"§ 552a. Records maintained on individuals

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

"(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(I) the categories of sources of records in the system;

"(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

"(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

"(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

§ 2000aa. Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses

(a) Work product materials

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however,* That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50; or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

SHERMAN ACT REFERRED TO IN OTHER SECTIONS

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 28, 29, 30, 31, 44, 82, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 8 section 1251; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 sections 970, 1331, 1770; title 45 section 791; title 46 section 814; title 49 section 10706; title 50 App. sections 1941a, 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 6, 6a, 7, 18a of this title.

§ 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

§ 4. Jurisdiction of courts; duty of United States attorneys; procedure

§ 4

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

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IMPROPER INFLUENCE

Restatement (Second) Torts 766, comment K (1979) holds that one who induces a physician wrongfully to disclose infromation about a patient is liable for damages that result from that disclosure. The inducement need not be a threat, nor a promise of reward, but may be a simple request or persuasion exerting only moral pressure." Gregory v. Unites States, 369 F.2d at 188. Hammonds v. Aetna Cas. & Sur. Co., 243 F.Supp. 793 (N.D.Ohio, 1965).

On appeal, the Washington Supreme Court reversed basing its decision on its perception of the gravity of the untreated disease and rejecting the standard of the ophthalmology profession. Helling v. Carey, 83 Wash.2d 514, 519 P.2d 981 (1974).

"Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing, division of markets, group boycotts, and tying arrangements." Northern Pacific R. Co. v. United States, 356 U.S. 5, 78 S.Ct. 518. United States v. Columbia Steel Co., 334 U.S. 495, 68 S.Ct. 1107, 92 L.Ed.1533.

As examined in St. Amant v. Thompson, 390 U.S. 727, 88S.Ct. 1323, 20 L.Ed.2d 262 (1968) whether the federal publisher entertained serious doubts as to the truth of his publication, "Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice."

A physician has a duty to perform when seeing problem in x-ray. Rule v. Cheeseman, 181 Kan. 957, 317 P.2d 472 (1957). Betesh v. United States, 400 F.Supp. 238(D.D.C. 1974).

UROLOGY

UNQUALIFIED LEADERSHIP

The present advertised head of urology/ nephrology for the nation at the NIH is Dr. Nancy Boucot Cummings, born February 21, 1927. Nancy Boucot had been a history major at a music school receiving her B.A. from Oberlin College before receiving her M.D. from the University of Pa School of Medicine which was followed by research grants for the Royal Hospital of St. Bartholomew and Manchester Royal Infirmary, London, England.

At about this time, Dr. Martin Marc Cummings was chief of Office of International Research, director of National Library of Medicine and associate director for research grants NIH. He was also a good friend of Katherine Rosenbaum Boucot, Nancy Boucot's mother. (Dr. Martin

Cummings' parents were Samuel and Cecelia Silverman Cummings.)

Dr. Nancy Boucot received, just before her marriage to Milton Curtis Cummings, a research grant from the NIH of such adequate size to be welcomed at Harvard as a prelude to being made head of urology/nephrology for the nation in spite of no hands on experience in this specialty. The priorities of qualification v. politics is more critical in this area than those for ambassadorship to Ireland.

HOW AND WHY THE MALPRACTICE INSURANCE COMPANIES CONTROL HHS (NIH)(NLM)

This evidence can be found in the Consent of the Governed and Other Deceits by Pulitzer Prize winner Arthur Krock, pages 27, 28; How Washington Really Works by Charles Peters, page 52; The Consumer Revolution by James Bishop, Jr. and Henry W. Hubbards, page 89. Lee Loevinger in

The Consumer Revolution page 89 states:

> "Unfortunately, the history of every regulatory agency in the government is that it comes to represent the industry or groups it's supposed to control."

This passage tells how for seventy thousand dollars a year and wining and dining, the bureaucrats in HHS represent the malpractice insurers' interests.

John Pekkanen in 1979 published The Best Doctors in the U. S. The number of urologists listed in the 1979 edition who have had to be recalled should be the subject of a senate investigation dealing with the fistula code and the blacklist at the National Library of Medicine and why urological problems have gone unresearched and uncared about and why there is no viable leadership in this specialty. Dialysis centers in this nation contribute significantly to the national deficit and the abolishment of the beastial fistula

code could decimate the need for the dialysis industry.

MEMBERSHIP IS OVERLY RESTRICTIVE

This policy does not allow normal growth. There are only approximately 30 urologists per state born since 1945 of American parentage. There is a significantly and conspicuously large percentage of doctors in urology imported from India.[1/] Does the lack of technological advances turn students off or are they screened to prevent a shake-up?

EVIDENCE OF A QUAGMIRE IN THE SPECIALTY

Prevention magazine carried an article written by Kay Zakariasen in their May, 1982 edition listing the inadequacies of the urological specialty. In a form letter dated June 14, 1983 to the Petitioner

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1/ Directory of Medical Specialties, Published by Marquis Who's Who in Chicago, 1985-1986

Prevention stated that because of the huge volume of mail relating to urological problems they recommended the National Self-Help Clearinghouse.

HISTORY OF FEMALE FISTULAE REPAIR

The latest developments in female fistulae repair took place in 1861 by Dr. J. Marion Sims. Woman's Surgeon, the life story of J. Marion Sims, written by Dr. Seale Harris and published by McMillan in 1950, tells how Dr. Sims developed the expertise and skill to do fistula repair in women. Because of professional jealousy he was driven to Europe where he was acclaimed in all the leading medical centers and called upon to act as physician to all the crowned heads of Europe.

John H. Ridley, M.D. in Gynecologic Surgery: Errors, Safeguards, Salvage (1974) page 155-64 lists the men and their dates who have contributed to fistulae

repair:

1) J. Marion Sims 1861

2) H. Van Roonhuyse 1672

3) Gossett of London 1834

MALPRACTICE ELEMENT

The urinary vaginal fistulae is prima fascie malpractice is exemplified by Robertson v. Lacroix, 534 P. 2d 17, (Okl. App. 1975). Pry v. Jones, 253 Ark. 534, 487 S.W. 2d 206 (1973), and Tatro v Leuken, 212 Kan. 606, 512 Kan. 606, 512 P. 2d 529 (19730).

In Tatro v. Leuken, supra, the defendant-physician testified that a vesico-vaginal fistula in connection with a hysterectomy is "a very minimal risk." Worded another way, it is more apt to be deliberate statistically.

MEDICAL DECREE FOR JUDICIARY

In Gynecologic Surgery, supra at 156,

Dr. Ridley admonishes the courts of law that vaginal fistulae are resulting from surgery and irradiation and all urinary vaginal fistulae are to be off limits to the judicial system.

TYPES OF URINARY FISTULAE

Copied from Gynecologic Surgery, supra at 155, is the following table:

Types of Urinary Fistulae
A. Vesicovaginal
B. Urethrovaginal
C. Ureterovaginal
D. Miscellaneous
    1. Vesicocervicovaginal
    2. Ureterocoliovaginal

PETITIONER'S INJURY

Because the fistula is able to close itself off as the pressure in the bladder approaches zero in the voiding state as seen in closed circuit T.V. at the Mayo Clinic and at Greenville Memorial Hospital when Dr. David King took x-rays, the fistula is in the sphincter muscle so the Petitioner has a sphinctovaginal fistula,

a first in medical history and it could have been caused only in the manner in which it was. An analogy of this injury is to imagine a tiny heavy-density, heavy duty elastic band and then imagine trying to force a fine needle through it. The Petitioner was in agony for many hours while Carol Waters, a deviate on hospital premises, watched with keen interest how the Petitioner writhed in agony minute by minute and hour by hour. It is this woman and this deed that the malpractice insurers have protected by preventing the counterclaim of altered x-rays.

The Plaintiff has never denied to any court that the x-rays were altered. How many more perverts will do the same to others as was done to the Petitioner because of greed, fear, and the homage system interfering with justice?

POSITION OF THE GYNECOLOGISTS

The specialty of urology wants a monopoly on urinary damage. Gynecologists whose work consists exlusively of re-paring damaged female organs want to be able to do urinary fistulae repair. They are told they can not by the urologists and the malpractice insurers. Is this monopolistic?

PERNICIOUS EFFECT ON COMPETITION

The present primitive situation whereby the very term "urinary vaginal fistula" strikes a chronically sensitive nerve with urologists must end. Reform and a viable solution must be found as the quagmire is producing growing hysteria everywhere. Dr. Sheila Bisaillon of Montreal, Quebec has informed the Petitioner that this problem is rank in Canada also.

The built-in problems within the specialty of urology precludes changes

coming from within. Control comes from fear of reprisals from malpractice insurance companies who recognize the presence of this type of fistulae as malpractice and that these fistulae play very serious havoc with the immune system.

Urologists have confided to the Petitioner that their work has been limited almost entirely to cystoscopy (looking in the bladder) and drug therapy (Macrodantin and Double Septra). Urologists are told they cannot do repair surgery on fistulae they must refer these cases to urologists at major medical schools. <u>This is a monoply within two other monopolies.</u>

Since the malpractice insurers control the NIH and the NIH is in charge of research grants to major medical schools, it comes as no thunderbolt that the malpractice insurers have full control over what fistula victim gets treated since the

NLM houses a list of those tagged for no treatment. The Petitioner was told at Emory that she could have had repair surgery if she had not requested investigations of how it happened. (See Leach v. Drummond, supra.)

TECHNOLOGY VOID

The technology in magnetic-computers and micro-surgery could and should be applied to fistulae repair. Victims like the Petitioner are willing to arbitrate but as long as the deceit, nickel-and-dime greed and lack of leadership is allowed to prevail there will never be an opportunity to advance from J. Marion Sims' techniques of 1861.

REMEDY

Just as there is a separation in church and state so should there be a separation of Health and Human Services and the malpractice insurers. Arbitration is needed.